PHILIPPINES

TRADE SUMMARY

In 2001, the U.S. trade deficit with the Philippines was nearly $3.7 billion, down $1.5 billion from the $5.1 billion deficit in 2000. U.S. goods exports to the Philippines totaled $7.7 billion, a decrease of $1.1 billion (12.9 percent) from the level of U.S. exports to the Philippines in 2000. The Philippines was the United States' 19th largest export market in 2001. U.S. imports from the Philippines totaled $11.3 billion in 2001, a decrease of $2.6 billion (18.7 percent) from the level of imports in 2000.

U.S. exports of private commercial services (i.e., excluding military and government) to Philippines were $1.7 billion in 2000 (latest data available), and U.S. imports were $1.5 billion. Sales of services in Philippines by majority U.S.-owned affiliates were $858 million in 1999 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $23 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines at the end of 2000 was $2.9 billion, a decrease of 7.2 percent from the level a year earlier. U.S. FDI in the Philippines is concentrated largely in the manufacturing, financial and wholesale sectors.

IMPORT POLICIES

Tariffs

Imported manufactured goods that are not locally produced generally face low tariffs, while imports that compete with locally produced goods face tariffs of up to 30 percent. Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 in 1995 and 288 in 1996, most-favored-nation (MFN) tariff rates applied to all goods (except sensitive agricultural products) are to be gradually reduced to the following target rates: three percent for raw materials by January 2003; 10 percent for finished products by January 2003; and a uniform five percent tariff rate for all remaining products by January 2004.

While the Philippines has indicated that it remains committed to these reduced tariff levels, the Ramos Administration (1992-1998), in response to requests from import-sensitive industries, in 1998 issued E.O. 465 and E.O. 486. These E.O.'s established a more gradual rate reduction schedule for many items, established higher rates for some tariff headings (garments, rubber, steel, textiles, certain petrochemicals, forest product industries, ammunition, and unfinished automotive vehicles imported in kit form), and set lower rates on other headings, including some agricultural products.

E.O. 334, issued on January 3, 2001, during the final days of the Estrada Administration, set out tariff rates for the period from 2001 to 2004. Generally, the E.O. maintained 2000 tariffs for 2001 and proposed gradual rate reductions in 2002 and 2003 to meet the goal established under the Ramos Administration for a uniform five percent tariff rate for all products by January 2004. Exceptions to this plan included some raw materials that would face a three percent tariff rate for 2004, as well as finished automobiles and some agricultural goods, which would face higher rates. E.O. 11, issued April 17, 2001, under the new Arroyo Administration, corrected errors in E.O. 334 and lowered the tariff on automotive vehicle components from 10 percent to three percent under the Philippine Government's Commercial Vehicle Development Program.

Imports of finished automobiles (completely built-up units) are subject to the highest duty rate applied to nonagricultural products, as an incentive to promote local assembly under the Philippine Motor Vehicle Development Program. The rate was reduced from 40 percent to 30 percent on January 1, 2000. E.O. 465, signed in 1998, increased tariffs on completely knocked down automotive vehicle imports from seven percent in 1998 to 10 percent in 1999 and 2000. Under E.O.

334, tariff rates for finished automobiles will remain at 30 percent until 2003 and rates for completely knocked down vehicles will remain at 10 percent. In 2004, the rate for both goods are scheduled to drop to five percent. Executive Order No. 314, effective November 8, 2000, mandated a three-month suspension of a three percent import tariff on crude oil and most refined petroleum products. The Philippine Government intended to soften the impact of successive petroleum price increases on the prices of basic commodities and services through the tariff suspension. On February 8, 2001, the three percent tariff was reimposed.

The Safeguard Measures Act (Republic Act 8800), effective August 10, 2000, authorizes the Commissioner of Customs to raise a tariff or, in the case of an agricultural good, impose a quantitative restriction, to protect a domestic industry from an import surge. The Secretary of Trade and Industry or Secretary of Agriculture makes a preliminary determination on a case and may direct the Commissioner of Customs to implement a provisional safeguard measure. The Tariff Commission then undertakes a formal investigation and makes a recommendation to either Secretary on whether to apply a safeguard measure. The relevant Secretary, based on that recommendation, then directs the Commissioner of Customs to implement a safeguard, to last one to four years, with extensions possible for an additional six years.

The U.S. Government has expressed reservations concerning the Philippine safeguards legislation, noting in particular that the five days afforded foreign industry to comment on proposed safeguards is not a reasonable period of time as provided for in the WTO Agreement on Safeguards. The brief time allotted to foreign exporters appears to be a merely cursory way for the Philippines to meet this WTO commitment while falling fall short of maintaining a transparent safeguards mechanism.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including grains, livestock and meat products, sugar, potatoes, onions, and coffee. Among these, 15 items (at the four-digit HS level) are subject to a minimum access volume (MAV) and tariff-rate quotas (TRQs), where imports outside of the quota are subject to a higher tariff. Several products with significant market potential for the United States are subject to TRQs, including corn (with an in-quota tariff rate of 35 percent, and 65 percent tariff outside of the quota), poultry meat (tariffs of 45 percent and 60 percent), and pork (tariffs of 30 percent and 60 percent).

Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established rules for implementing the 15 TRQs and allocating import licenses. In the past, the United States has expressed concerns that TRQs for pork and poultry meat were administered in a manner that allocated a vast majority of import licenses to domestic producers who had no interest in importing. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 that resolved the United States's primary concerns over the Philippine TRQ system. The U.S. Government continues to closely monitor the operation of the Philippines TRQ system and the allocation and distribution of import licenses.

Under E.O. 334, the Philippines will reduce tariffs for most agricultural goods during the next several years. For example, tariffs for prepared meats, corn meal and pellets, and coffee would be cut to 30 percent by 2004. Tariffs on other, less-sensitive goods, will be reduced to five percent.

Section 61 of the Philippine Fisheries Code, Republic Act 8550 permits importation of fresh, chilled, or frozen fish and fish products only when

certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. Fisheries Administrative Order (FAO) 195, Series of 1999, issued by the Department of Agriculture on September 20, 1999, implements Section 61. One of the criteria the Secretary is mandated to consider in determining whether to approve importation is whether there is serious injury or threat of injury to domestic industry that produces like or directly competitive products.

Excise Tax on Distilled Spirits

Current Philippine law (Sections 141-143 of the National Internal Revenue Code and Revenue Regulation 17-99) discriminates against many imported distilled spirits by subjecting them to a higher excise tax than applied to many common domestic spirits. Distilled spirits produced from indigenous materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8.96 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 84 pesos to 336 pesos per proof liter (depending on the net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 13.44 pesos per liter, while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 26.88 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 112 pesos or 336 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The excise tax for automotive vehicles is based on engine displacement, as opposed to vehicle value. This system imposes a competitive disadvantage on imported vehicles with larger engine displacement, including many U.S. exports. Current tax rates for motor vehicles with gasoline engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above. Large utility vehicles (seating for ten or more) are exempt from this excise tax. The U.S. Government continues to closely monitor proposals to impose a maximum weight limit, in addition to the minimum seating requirement, for the excise tax exemption for utility vehicles. Such a weight limit would disqualify several U.S.-made vehicles from receiving the exemption.

Quantitative Restrictions

The National Food Authority administers quantitative restrictions on rice imports. The minimum access volume (quota) for rice was 134,395 metric tons for 2001 and is 164,265 metric tons for 2002. Rice import demand is expected to continue growing in the Philippines due to persistent shortfalls in local production and rapid population growth (2 percent annual growth rate). The United States continues to urge the Philippines to consider tariffication of rice in advance of the time-frame agreed upon in the Uruguay Round Agreement on Agriculture.

Other Import Restrictions

The Philippines maintains import restrictions on a range of products. For example, imports of used automotive vehicles remain subject to government review and approval. Since April 15, 1999, the National Telecommunications Commission (NTC) has required cellular telephone service providers or authorized equipment dealers to obtain an import certification prior to importation of handsets for

satellite-based cellular phones.

Philippine regulations generally require that any firm importing coal also purchase some locally produced coal. While importers in the past were required to buy one unit of local coal for every unit of imported coal, the Department of Energy sometimes applies a slightly less onerous requirement.

Customs Barriers

All importers or their agents must file import entries with the Bureau of Customs (BOC), which then processes these entries through its Automated Customs Operating System (ACOS). ACOS uses a computer system to classify shipments as low-risk (green lane), moderate risk (yellow lane) or high risk (red lane). BOC officials say that shipments channeled through the yellow lane will require a documentary review, while red lane shipments will require physical inspection at the port. According to BOC, green lane shipments are not subject to any documentary or inspection requirements. BOC has also added a "Super Green Lane" for the largest importers. To date, however, few importers have made use of this customs facility.

R.A. 8181 (1996) and a series of regulations issued by the BOC in 1999 were intended to implement transaction value as the basis of customs valuation on January 1, 2000, consistent with Philippine commitments made in the 1994 WTO Agreement on Customs Valuation. However, the law and regulations contained many deficiencies, and a new customs valuation law, R.A. 9135, was passed in April 2001 to clarify the hierarchy of valuation methods to be used by the BOC. The law eliminated the requirement that the BOC maintain a price reference database for valuation purposes. The law also authorized the BOC to conduct post-entry audits. Customs Administrative Order (CAO) 5-2001, implementing R.A. 9135, was approved by the Department of Finance on November 16, 2001. A series of Customs Memorandum Orders (CMOs 37-2001, 1-2002, 2-2002, and 3-2002) issued in January 2002 made further clarifications on valuation methodology, post-entry audit, and appeals procedures. Notably, CMO 37-2001 eliminates private sector involvement in the valuation process and clarifies that reference values may be used as a risk management tool, but not as a substitute value for valuation purposes. The U.S. Government will closely monitor implementation of the new law and related CAOs and CMOs.

The United States has repeatedly requested that the Philippine Government improve administration of its customs regime and minimize import harassment. Under the preshipment inspection regime (PSI) operated until March 31, 2000, by Societe Generale de Surveillance, there were frequent abuses reported, including arbitrary and unjustified increases or "uplifts" of the invoice value of imports, often on the basis of inappropriate or questionable information. In late 2001, the Philippine Government announced it would consider returning its customs administration to a new PSI system. USTR and other U.S. Government agencies noted the problematic history of PSI and urged the Philippines to continue reforming its current customs regime without resorting to PSI. U.S. exporters have voiced fewer complaints about the BOC's current valuation system, but there are periodic reports of other procedural irregularities, including requests by customs officials for the payment of unrecorded facilitation fees. The U.S. Government has repeatedly complained to the Philippine government on behalf of a U.S. exporter of certain cast-iron hubless pipe to obtain fair market access for this product.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for 75 products subject to mandatory Philippine national standards, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to mandatory standards, U.S. manufacturers' self-certification of conformity is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal, as opposed to seizures limited to the offending goods. The "Generic Act" of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture (DA) has established plant health regulations, which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. A protocol has been approved to allow the importation of Florida grapefruit, oranges, and tangerines into the Philippines. However, fresh fruit imports from Texas are still currently prohibited due to phytosanitary concerns regarding the possible presence of fruit flies. Similar protocols are being negotiated for a range of other fruits and vegetables, including cherries, broccoli, lettuce, and cauliflower.

The DA continues to limit poultry meat imports by inappropriate use of Veterinary Quarantine Certificates (VQCs) and import inspections. The disruptive trade practices by DA include: restricting VQCs to only those importers that import whole birds, not cuts or parts; the requirement that importers promise not to sell the imported product in certain sales channels; and practices that discourage issuing VQCs certificates to traders.

The Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer s report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA). Contracts for government procurement are awarded by competitive tender. Preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects, and in locally funded government consulting requirements. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work.

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for nonperformance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

Executive Order 262, dated July 2000, shifted

emphasis from bidder's pre-qualification to an eligibility check and strengthened post-qualification check by changing the criterion for award from lowest evaluated responsive bid to lowest calculated responsive bid. The bidder's available budget serves as the ceiling in evaluating bid price. The Bid and Award Committee (which replaced the Pre-qualification, Bid, and Award Committee), will determine the eligibility of prospective bidders, and adopt procurement procedures that utilize information technology.

Although the long-term procurement reform efforts described above continue to hold promise, there remain numerous allegations of irregularities in the government procurement process, especially in procurement for civil aviation and military hardware. The U.S. Government continues to advocate on behalf of U.S. companies affected by these irregularities.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six-year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-administered export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy similar incentives, plus tax and duty-free imports of capital equipment and raw materials, and exemption from customs inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a five percent tax on gross income. Firms that earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit on incremental annual export revenue. Legislation was introduced in 2000, but did not pass, to restore a tax credit for imports of raw material or components not readily available locally, which expired on December 31, 1999.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The development of comprehensive protection of IPR in the Philippines has been marked by uneven progress. Legislation implementing fully the WTO TRIPS Agreement commitments has been slow to develop, while enforcement agencies perennially have been hampered by a lack of resources and support from the judiciary. In April 2001, the Philippines was named to the USTR's Priority Watch List under Section 301 of U.S. trade law (Previously, the Philippines was on the Watch List). USTR identified lax copyright enforcement, especially with regard to a booming illicit industry in optical disk piracy, as a particular area of concern.

In addition to its commitments under the WTO TRIPS Agreement, the Philippines is a party to the Paris Convention for the Protection of Industrial Property, Berne Convention for the Protection of Literary and Artistic Works, Berne Treaty on the International Recognition of the Deposit of Microorganisms, Patent Cooperation Treaty, and Rome Convention. Although the Philippines is a member of the World Intellectual Property Organization (WIPO), it has not yet ratified the WIPO Performances and Phonograms Treaty or the Copyright Treaty.

The Intellectual Property Code

The Intellectual Property Code (R.A. 8293, 1997) provides the legal framework for IPR protection in the Philippines. The Electronic Commerce Act

(R.A. 8792, 2000) extends this framework to the Internet. Deficiencies in the Intellectual Property Code remain a source of concern, including ambiguous provisions on the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; burdensome restrictions affecting contracts to license software and other technology; and the court's lack of authority to order the seizure of pirated material as a provisional measure without notice to the suspected infringer. A notable achievement, however, was the adoption in January, 2002, by the Philippine Supreme Court of rules establishing ex parte authority in civil cases of IPR infringement. USTR will monitor implementation of these rules, intended to occur in February, 2002. Legislation is also pending to provide IPR protection to plant varieties as required by the WTO TRIPS obligations that became mandatory for the Philippines on January 1, 2000. In 2001, President Arroyo signed into law Republic Act 9150, "An Act Providing for the Protection of Layout-Designs (Topographies) of Integrated Circuits".

Status of IPR Enforcement

Under the Intellectual Property Code of the Philippines, the Intellectual Property Office (IPO) has jurisdiction to resolve certain disputes concerning alleged infringement and licensing. IPO's administrative complaint mechanisms, established in April 2001, has yet to be tested. In addition to the IPO, agencies with IPR enforcement responsibilities include the Department of Justice, National Bureau of Investigation, Videogram Regulatory Board (for piracy involving cinematographic works), the Bureau of Customs, and the National Telecommunications Commission (for piracy involving satellite signals and cable programming). The Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) is composed of representatives from these and other agencies and is tasked with coordinating enforcement efforts. The private sector can file requests for IPR enforcement actions with the PIAC-IPR.

Significant problems remain in ensuring the consistent and effective protection of intellectual property rights. According to aggregated industry statistics, the total annual loss resulting from copyright piracy in the Philippines in 2001 was estimated at about $120 million. U.S. distributors report high levels of pirated optical discs of cinematographic, musical works, and computer games, and widespread unauthorized transmissions of motion pictures and other programming on cable television systems.

Serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general government budgetary shortfalls. In general, government enforcement agencies are most responsive to those copyright owners who actively work with them to target infringement. Enforcement agencies generally will not proactively target infringement. Joint efforts between the private sector and the National Bureau of Investigations and Videogram Regulatory Board have resulted in some successful enforcement actions. The designation of 48 courts to handle IPR violations has done little to streamline judicial proceedings, as these courts have not received additional resources and continue to handle a heavy non-IPR workload. Delays in the issuance of warrants are a problem and arrests are infrequent. In addition, IPR cases are not considered major crimes, and take a lower precedence in court proceedings. Because of the prospect that court action will be lengthy, many cases are settled out of court.

According to a major U.S. apparel manufacturer, the Philippines has failed to establish punitive sanctions that are sufficiently strict to serve as a deterrent to IPR violators. For example, the

nominal damage awarded by the Philippine courts in most IPR cases amounts to a small fine, often with no risk of imprisonment. Such lax penalties do not dissuade counterfeiters from violating this company's trademark rights. The end result is that the company spends a significant amount of resources on investigations and litigation; many of the company's IPR cases that is has filed with the Philippine authorities remain unresolved close to ten years since the original complaint.

SERVICES BARRIERS

The Philippines is long overdue in ratifying both the Fourth Protocol to the WTO General Agreement on Trade in Services (GATS), embodying its proposed obligations under the WTO Basic Telecommunications Agreement, and the Fifth Protocol to GATS, embodying its obligations under the WTO Financial Services Agreement.

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some procompetitive regulatory principles contained in the WTO Reference Paper, however, the Philippines has never signed the agreement. The Philippines did not provide market access or national treatment for satellite services commitments and made no commitment regarding resale of leased circuits/closed user groups.

Financial Services

Insurance

Although current practice permits up to 100 percent foreign ownership in the insurance sector, the Philippines only committed in the WTO to a maximum of 51 percent equity participation. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. Under current regulations, minimum capitalization requirements increase with the degree of foreign equity. As a general rule, only the state-owned government insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to public and private build-operate-transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking

Pursuant to 1994 legislation, 10 foreign banks were permitted to open full service branches in the Philippines or to own up to 60 percent of a new or existing local subsidiary. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to operate up to six additional branches. The Philippines only committed to foreign ownership at 51 percent in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. The General Banking Law of 2000 (signed in May 2000 to succeed the 1948 General Banking Act) opened a seven-year window during which foreign banks may own up to 100 percent of one locally incorporated commercial or thrift bank (up from the previous 60 percent foreign equity ceiling). However, for the first three years, such foreign investment may be made only in existing banks, reflecting the current emphasis of the Bangko Sentral ng Pilipinas (BSP, the central bank) on banking sector

consolidation. Current regulations mandate that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. Rural banking remains completely closed to foreigners.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine law. Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign-ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in a board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign-equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of certain utilities (water and sewage, electricity transmission and distribution, telecommunications, public transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

The June 2001 Electric Power Industry Reform Act provides for the privatization of the transmission and distribution assets of the National Power Corporation. Transmission and distribution require a public utility franchise under the Act, which would be subject to a 40- percent foreign-ownership ceiling (1986 Constitution, Article XII, Sec. 11).

Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage) to Philippine citizens. Philippine law (R.A. 8182) also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the president of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign-flagged vessels from engaging in the provision of domestic carriage services. The country's bareboat chartering laws stipulate that Philippine-flagged vessels should be manned by a Filipino crew and disallows foreign crew/officers, except as supernumeraries.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a 100 percent Filipino-owned Philippine business to provide delivery services or establish a domestic company with a minimum of 60 percent Philippine-owned equity.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two "negative lists" that outline areas where foreign investment is restricted. The restrictions stem from a constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists was updated by E.O. 286, signed August 24, 2000.

List A restricts foreign investment in certain sectors because of constitutional or other constraints. For example, the practice of licensed professions such as engineering, medicine, accountancy, environmental planning, and law is fully reserved for Filipino citizens. Also reserved for Filipino citizens are enterprises engaged in retail trade (with paid-up capital of less than $2.5 million, or less than $250,000 for retailers of luxury goods), mass media, small-scale mining, private security, cock fighting, utilization of marine resources, and manufacture of firecrackers and pyrotechnic devices. Up to 25 percent foreign ownership is allowed for enterprises engaged in employee recruitment and for public works construction and repair (with the exception of BOT and foreign-funded or -assisted projects, that is, foreign aid, where there is no upper limit). Foreign ownership of 30 percent is allowed for advertising agencies, while 40- percent foreign participation is allowed in natural resource extraction (although the president may authorize 100 percent foreign ownership), educational institutions, public utilities, commercial deep sea fishing, government procurement contracts, rice and corn processing (after 30 years of operation, before which time 100 percent foreign participation is allowed), and ownership of private lands. Retail trade enterprises with paid-up capital of more than $2.5 million but less than $7.5 million are limited to 60 percent foreign ownership until March 2002, after which 100 percent foreign ownership will be allowed. Enterprises engaged in financing and investment activities, including securities underwriting, are also limited to 60 percent foreign ownership.

List B restricts foreign ownership (generally to 40 percent) for reasons of national security, defense, public health, safety, and morals. Sectors covered include explosives, firearms, military hardware, massage clinics, and gambling. This list also seeks to protect local small- and medium-sized firms by restricting foreign ownership to no more than 40 percent in nonexport firms capitalized at less than $200,000.

In addition to the restrictions noted in the "A" and "B" lists, the Philippines generally imposes a foreign-ownership ceiling of 40 percent on firms seeking incentives with the BOI under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years of the initial investment, or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens who can fill the position. However, the employer must train Filipino understudies and report on such training periodically. The positions of elective officers (i.e., president, general manager and treasurer) are exempt from the labor market test and understudy requirements.

The 1987 Constitution bans foreigners from owning land in the Philippines. The Investors' Lease Act (R.A. 7652, 1994) allows foreign companies investing in the Philippines to lease land for 50 years, renewable once for another 25 years, for a maximum 75 years.

Trade-Related Investment Measures

The BOI imposes industry-wide local content requirements under its Motor Vehicle Development Program and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Local content requirements in the motor vehicle sector are based on a point system, which translates to 40 percent for passenger cars and 45 percent for commercial vehicles of less than three tons.

The program also requires an investment of $10 million in parts and components manufacturing for export and domestic markets to establish a vehicle assembly facility ($8 million for trucks/commercial vehicles). This program also authorizes the BOI to create a mandatory parts list as part of the local content requirement for manufacturers.

In 1995, pursuant to the WTO Agreement on Trade Related Investment Measures (TRIMS), the Philippines notified the WTO of its maintenance of local-content and foreign-exchange balancing requirements to promote investment. Proper notification allowed the Philippines to maintain such measures for a five-year transitional period, ending January 1, 2000. In October 1999, the Philippines requested a five-year extension for the measures in the motor vehicle sector. After extensive consultations on this issue, the United States and the Philippines agreed in November 2001 that the Philippines will discontinue all local-content and exchange balancing requirements in the motor vehicle sector by July 1, 2003, following the implementation of a phase-out program slated to begin in January 2002. In February 2002 Philippine officials informed USTR that the government had as yet been unable to begin implementing the phase-out program due to "administrative errors" in the Presidential proclamation necessary to authorize the implementation. USTR and other U.S. Government agencies will continue to monitor Philippine implementation of this program.

Executive Order 259 of 1987 requires the soap and detergent industry to use a minimum of 60 percent of raw materials that do not endanger the environment, and prohibits imports of laundry soap and detergents containing less than 60 percent of such raw materials. The law is intended to require soap and detergent manufacturers to use coconut-based surface active agents of Philippine origin. While the provision was notified to the WTO, it has not been repealed. The Philippine Department of Justice, in Opinion No. 88 (1999), stated that E.O. 259 conflicts with the country's obligations under the WTO TRIMS Agreement. Since then, the E.O. has not been enforced.

The United States continues to monitor other TRIMS. Regulations governing the provision of BOI administered incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). Executive Order 776 (signed in July 1987) requires that pharmaceutical firms purchase semisynthetic antibiotics from a specific local company, unless they can demonstrate that the landed cost of imports is at least 20 percent less than that produced by the local firm. Letter of Instruction 1387 (issued in 1984), which requires mining firms to prioritize the sale of copper concentrates to the then government-controlled Philippine Associated Smelting and Refining Company (PASAR), has yet to be repealed despite PASAR's privatization in 1998. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme.

TRIMS and Retail Trade

Legislation passed by the Philippine Congress in February 2000 requires that foreign retailers, for the first 10 years after the bill's enactment, source

at least 30 percent (for retail enterprises capitalized at no less than $2.5 million) and 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. In addition to the domestic content requirements, prospective investors in the retail sector are further burdened by a reciprocity requirement. The Retail Trade Act states that only nationals from, or juridical entities formed or incorporated in countries that allow the entry of Filipino retailers shall be allowed to engage in retail trade in the Philippines.

Public Utilities

The Philippine Government's most recent privatization effort, the June 2001 Electric Power Industry Reform Act, requires the National Power Corporation (NPC) to privatize at least 70 percent of its generating assets within three years. Seventy-five percent of the funds used to acquire NPC assets must be inwardly remitted and registered with the Philippine Central Bank. However, foreign participation may be restricted pursuant to a constitutional provision regarding utilization of certain natural resources (such as water and geothermal resources) for power generation (1986 Constitution, Article XII, Section 2) as well as provisions requiring a minimum 60 percent Filipino ownership required to obtain water rights for hydropower generation under the implementing rules of the Water Code of the Philippines (P.D. 1067, 1976).

Licensing of Technology

Technology transfer arrangements are defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment, or licensing of all forms of intellectual property rights, including computer software (except for software developed for the mass market). The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business.

ANTICOMPETITIVE PRACTICES

The 1987 Constitution provides the Philippine Government with the authority to regulate or prohibit monopolies, and it also bans combinations in restraint of trade and unfair competition. However, there is no comprehensive competition law to implement this constitutional provision. Instead, there are a number of laws dealing with competition, including the Revised Penal Code (R.A. 3815, 1930), the Act to Prohibit Monopolies and Combinations in Restraint of Trade (R.A. 3247, 1961), Civil Code (R.A. 386, 1949), the Corporation Code (1980) Price Act (R.A. 7581, 1991), and the Consumer Act (R.A. 7394, 1932). These laws are not enforced, due to a lack of interest and/or competence on the part of enforcement agencies to challenge well-entrenched economic and political interests.

ELECTRONIC COMMERCE

On June 19, 2000, the Electronic Commerce Act (Republic Act No. 8792) took effect. The electronic commerce law provides that business transactions entered into through an automated electronic system such as the Internet are functional and legal, equivalent to a written document protected under existing laws on commerce. Business-to-business transactions include domestic and international exchange of information, arrangements and contracts for procurement, payments, supply management, transportation, and facility operations. An Internet service provider (ISP) is generally not criminally liable if the ISP does not directly commit any infringement or other unlawful activities or does

not cause another party to commit any unlawful act. The act includes provisions to penalize (among other offenses) hacking or cracking (unauthorized access into or interference in a communication system) and piracy (or the unauthorized reproduction, distribution, importation, use, removal, alteration, and downloading, or broadcasting of copyrighted works including legally protected sound recordings). Electronic transactions are not presently subject to any tax measures. However, a reciprocity clause specifies that all benefits, privileges, and advantages established under the act will be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Philippine citizens.

OTHER BARRIERS

Corruption is a pervasive and long-standing problem in the Philippines. The Philippine Revised Penal Code, the Anti-Graft and Corrupt Practices Act, and the Code of Ethical Conduct for public officials are intended to combat suspected corruption and related anticompetitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The Sandiganbayan (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman. There is also a Presidential Commission Against Graft and Corruption that is tasked with prosecuting corruption cases linked to the former Marcos regime.

Soliciting/accepting and offering/giving a bribe are criminal offenses, punishable with imprisonment (six to 15 years), a fine and/or disqualification from public office or business dealings with the government. As with many other laws, enforcement of this provision has been inconsistent. An initiative to strengthen public and private governance, including anticorruption efforts, was launched in cooperation with bilateral and multilateral aid donors (in particular, the World Bank) in May 2000. To date, it has borne little fruit.

An October 2000 USAID-funded survey of more than 600 randomly-selected Philippine and foreign-invested enterprises in the National Capital Region suggests that graft remains a serious problem at many levels in all branches of the Philippine Government. Almost three-fourths (73 percent) of the enterprises surveyed had extensive or moderate personal knowledge of public-sector corruption on matters directly related to their sector of business. Almost one-half (45 percent) believed companies need to give bribes to win public sector contracts.

Asked about activities for which their company had been asked for a bribe by anyone in government, the respondents gave the following answers: local government permits or licenses (55 percent); payment of income taxes (52 percent); national government permits or licenses (42 percent); compliance with regulations on importation (17 percent); supplying government with goods or services (15 percent); collecting receivables from government (9 percent); and utilization of government incentives (6 percent).

Very few agencies were rated by the respondent enterprises as sincerely fighting corruption. Asked to identify Philippine government agencies or government-controlled corporations that are corrupt, the following agencies came out as the top five: Bureau of Customs (74 percent); Bureau of Internal Revenue (72 percent); Department of Public Works and Highways (57 percent); Department of Education, Culture and Sports (22 percent); and the Philippine National Police (16 percent).

In the past, the U.S. Embassy and the American Chamber of Commerce in Manila have had modest success in representing U.S. business interests in cases where U.S. firms seemed disadvantaged because of reportedly questionable

public bidding procedures. The Philippines is not a signatory of the OECD Convention on Combating Bribery.

Both foreign and domestic investors have expressed concern about the propensity of courts and regulators to stray beyond matters of legal interpretation into policymaking functions. Investors complain that these officials rarely have any background in economics, business, or a competitive economic system and that entrenched economic interests are able to manipulate the legal system and regulatory process to protect market position. For example, spectrum allocation and licensing in the telecommunications sector are often well guarded by incumbent firms, despite regulations that require transparent distribution of these rights. Another example of court interference in policymaking is a temporary restraining order issued by a lower court against an upper court decision that has blocked imports of cast-iron hubless pipe since June 2001.